IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.568 OF 2005
IN
NOTICE OF MOTION NO.782 OF 2005
IN
SUMMARY SUIT NO.5162 OF 1998

M/s.Mansukhlal Sobhagchand
& Co. & Another .. Appellants.

V/s.

Madhukar K. Bugde .. Respondent.

Mr.Bharat Vaishnawa i/b. M/s.Bharat Vaishnawa & Co. for the appellants.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 19TH JULY, 2005.

P.C. :

Heard.

2. In the reply-affidavit, the respondent-defendant stated thus :

> "7. ..... I say that the properties as mentioned in the said paragraph were sold not for depriving the claim of the Plaintiff in the above suit, for the purpose of disbursing/repayment of the loan amounts of Bank and other persons. I crave leave to refer to and rely upon the said receipt of payment when produced. These transactions were done in regular and natural course of business as the said lands at items a & b at Exhibit F had ceased to be profit yielding and they were sold to avoid further liability of increasing the cumulating bank interest and loan. The other properties are

> mortgaged with the Bank on the own showing of the Plaintiffs and these properties are mortgaged with the Bank since 1989 and there is no question of selling, transferring and/or allenating the said properties at present to the knowledge of the Plaintiffs. The property at Item No.(g) is donated by me to school viz. Malewad Panchakroshi High School in the year 1969 and there is school standing on the said property. The said school is imparting education to the children in the locality upto 10th standard and it is a recognised school under the School Code. There are more than 150 students studying in the said school as of date and is recipient of grant-in-aid."

3. In view of the aforesaid averment made in the reply-affidavit and the fact that in the affidavit in support there is no allegation by the plaintiff that the defendant is trying to dispose of the property with a view to deprive the claim of the plaintiff and to get out of the execution of decree that is likely to be passed against him, the learned Motion Judge cannot be said to have erred in dismissing the notice of motion.

4. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)